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EXAMINER

AMAYA, CARLOS DAVID

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/695,817
Filing Date: October 30, 2003
Appellant(s): TANAKA, SHINOBU

David P. Emery
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/15/2008 and the supplemental appeal brief filed 5/30/08 appealing the rejection of the Office action mailed 10/30/2007.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(8) Evidence Relied Upon

JP 10082223	Kito	3-1998
GB 2 395 331	Thorpe	5-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Objections

1. Claim 5 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is

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required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The newly amended claim 1 recites substantially the same subject matter of claim 5.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6, 8-13, 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Kito (JP 08237734).

With respect to claim 1, Kito discloses an apparatus for preventing an unqualified person from driving a vehicle (car antitheft device), comprising: a marker detector provided in the vehicle (receiver 12 provided in the vehicle as shown in the figures) to detect a qualified person marker (transponder 11) held by a driver having a driving qualification appropriate for driving the vehicle (only authorized personnel hold the transponder 11 to operate a cash transport truck, for example, paragraph 0001) only when the driver holds the qualified person marker opposite the marker detector (as shown in the figures 1 and 3 the marker detector, receiver 12, detects the marker, transponder 11 ONLY when the marker is hold opposite the marker detector. Shoe and gas pedal are connected by magnetic coupling, paragraph 0021); and a control unit (ECU 16) for continuously monitoring an output from the marker detector and taking a

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predetermined measure to ensure safety when a state occurs in which the qualified person marker is not detected (paragraph 0010-0012, continuously monitoring of the transponder 11 is carry out by ECU 16, since once the two are separated power is no longer provided to transponder 11, horn 21 and head lights 22 are operated and engine halt is carry out when the two are separated, paragraph 0028-0033), wherein the predetermined measure is released when the marker detector again detects the qualified person marker (one of ordinary would have envisioned providing access to the vehicle when the authorized person holding the transponder 11 gets in the car after it has stopped, to operate the car once it has been recovered from a theft attempt, for example).

With respect to claim 2,9, Kito discloses the apparatus as claimed in one of the claims, wherein the measure is a warning for appealing to the sense of sight or the sense of hearing of the driver (horn 21 and headlight 22 are operated when ECU 16 does not detect transponder 11, paragraph 0033-0034).

With respect to claim 3, 10, Kito discloses the apparatus as claimed in one of the claims, wherein the measure is stopping the driving of the vehicle (halt of the vehicle is performed when ECU 16 does not detect transponder 11, paragraph 0033-0034).

With respect to claim 4, 11, Kito discloses the apparatus as claimed in one of the claims, wherein the measure comprises a warning for appealing to the sense of sight or the sense of hearing of the driver and the stopping of the driving of the vehicle is performed after the warning (horn 21 and headlight 22 are operated when ECU 16 does

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not detect transponder 11 position in a shoe of a driver and halt of the vehicle is performed after certain time, paragraph 0033-0034).

With respect to claim 5, Kito discloses the apparatus as claimed in claim 1, wherein the measure is released when the marker detector again detects the qualified person marker. One of ordinary would have envisioned providing access to the vehicle when the authorized person holding the transponder 11 gets in the car after it has stopped.

With respect to claim 6, Kito the apparatus as claimed in claim 1, wherein the control unit takes the measure when a state occurs in which the qualified person marker is not detected for a predetermined time period (paragraph 00032).

With respect to claim 8, Kito discloses an apparatus for preventing an unqualified person from driving a vehicle (car antitheft device), comprising: a marker detector (receiver 12) provided in a floor of a cab of the vehicle (paragraph 0044 discloses that the receiver 12 can be provided in a surface of a floor) to detect a qualified person marker provided in a shoe worn (transponder 11 is positioned in a shoe see fig. 3) by a driver having a driving qualification appropriate for driving the vehicle (authorized personnel to drive the vehicle); and a control unit (ECU 16) for monitoring an output from the marker detector and taking a predetermined measure to ensure safety when a state occurs in which the qualified person marker is not detected (paragraph 0010-0012, continuously monitoring of the transponder 11 is carry out by ECU 16, since once the two are separated power is no longer provided to transponder 11, horn 21 and head lights 22 are operated and engine halt is carry out when the two are separated,

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paragraph 0028-0033), wherein the predetermined measure is released when the marker detector again detects the qualified person marker (one of ordinary would have envisioned providing access to the vehicle when the authorized person holding the transponder 11 gets in the car after it has stopped, to operate the car once it has been recovered from a theft attempt, for example).

With respect to claim 12, Kito discloses the apparatus as claimed in claim 8, wherein the marker detector detects the qualified person when the qualified person marker provided in a shoe is disposed opposite the marker detector provided in the floor of the cab. The marker detector (receiver 12) detects the marker (transponder 11) ONLY when the marker is hold opposite the marker detector by magnetic coupling paragraph 0021. Paragraph 0045 discloses providing transponder 11 is placed in a shoe and receiver in a surface floor of a vehicle).

With respect to claims 13,16, Kito discloses the apparatus as claimed in one of the claims , the marker detector further comprising: a receiving antenna (antenna coil 17 fig. 1); a power source unit connected to the receiving antenna and configured to generate an electrical power signal in response to an electromagnetic signal coupling into the receiving antenna (antenna 17 severs as the coil for power transmission, paragraph 0019 and 0021); a modulation unit (amplifier 18) powered by the electrical power signal and configured to modulate a signal identifying the qualified person marker (paragraph 0019 amplifier 18 makes a digital signal of the receive code) and indicating that a driver of the vehicle is qualified to drive the vehicle (amplifier 18 transmits the code to ECU 16, which makes the comparison of the received code an the pre-stored

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code); and a sending antenna connected to the modulation unit and configured to transmit the modulated signal (magnetic-flux generating circuit 19, paragraph 0020), wherein the qualified marker is disposed in a shoe of a driver qualified to drive the vehicle (see figure 3).

With respect to claim 15, 17, Kito discloses the qualified person marker claimed in one of the claims, wherein the receiving antenna receives the electromagnetic signal from a marker detector located in the vehicle only when the qualified person marker is placed opposite the marker detector (as shown in the figures 1 and 3 the marker detector (receiver 12) detects the marker (transponder 11) ONLY when the marker is hold opposite the marker detector. Shoe and gas pedal are connected by magnetic coupling, paragraph 0021).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kito (JP 08237734) in view of Thorpe (UK GB 2,395,331 A).

With respect to claim 7, Kito discloses the apparatus of claim 1, however, does not disclose expressly a driver detector for detecting the presence or absence of a driver riding on the vehicle.

Thorpe discloses a driver detector (seat pressure pad 120, Page 10 lines 24-26) for detecting the presence or absence of a driver riding on the vehicle (Page 10 lines 27-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the driver detector disclosed by Thorpe in Kito's invention.

The suggestion or motivation for doing so would have been to detect the presence of an unauthorized operator sitting in the driver's seat as disclosed by Thorpe, Page 11 lines 1-6.

(10) Response to Argument

Appellant argues that Kito does not disclose "wherein the predetermined measure is released when the marker detector again detects the qualified person marker". In response, it is submitted that the device disclosed by Kito is for a theft prevention device used in cash transportation vehicles. Thus, if an authorized person enters the vehicle and restarts the engine after the vehicle has been stopped, and the lights and the horn are on as a result of a theft attempt, operation of the vehicle must be granted to the qualified person holding the marker detector, since the codes will match (See Fig 6, step S40). Further, there is nothing in the Kito reference that requires a special step to release the predetermined measure (stoppage of engine, operation of headlights and horns) after a theft attempt. Also, please note that the claim only requires that the predetermined measure is released when the marker detector again detects the qualified person; that is, when step S40 is checking to see whether the

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codes match, the predetermined measure is released, or in other words, the predetermined measure is in a released state. It is the examiner's position that the claim language does not require that the predetermined measure be released at the time of the marker detector again detecting the qualified person marker. As long as the predetermined measure is released (note the claim language does not preclude it being released in a previous step) when the marker again detects, Kito meets the claim language. It is respectfully submitted that the Kito device must be released before step S40 in order to function properly. Otherwise, the device would only operate once and would need to be discarded, along with the vehicle, after step S40 determines the codes do not match.

For the reasons discussed above, it is respectfully submitted that one having ordinary skill in the art would appreciate that after the car is stopped, the predetermined measures (stop of engine, head lights on, and horn on) need to be released when the qualified person holding the marker opposite the marker detector again enters the vehicle. Since the Kito reference is silent as how this measure is released, it would be an inherent property to release the measures so that subsequent code matching can take place.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

/Carlos Amaya/

Examiner, Art Unit 2836

/Michael J Sherry/

Supervisory Patent Examiner, Art Unit 2836

Conferees:

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Attachments:

JP 10082223 (original and translation)